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Paper No. 16

In re Application of
Robert J. DiStasio *et al*
Application No. 10/015,408
Filed: December 12, 2001
Attorney Docket No. 6177-16

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: DECISION ON PETITION
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This is a decision on the petition filed by facsimile transmission on February 12, 2004 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated January 31, 2003. The petition is being considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

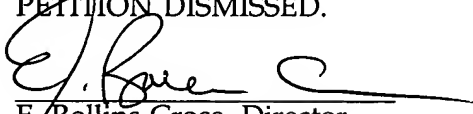
A review of the record shows that following a requirement promulgated on October 23, 2002 by which petitioners were required to elect a single claimed species of the disclosed invention for prosecution, petitioners filed numerous replies which were held to be informal and/or nonresponsive. Ultimately, this application was held to have become abandoned for failure to reply to the letter of January 31, 2003 holding that the election filed by petitioners on December 20, 2002 was informal and/or nonresponsive.

Petitioners allege that this application is not abandoned because a reply to the letter dated January 31, 2003 was in fact filed on February 7, 2003. Petitioners have established that a reply was timely filed by furnishing a copy of the reply having a 37 CFR 1.8(a) certificate of transmission affixed thereto. See 37 CFR 1.8(b).

However, the Primary Examiner reports that the February 7, 2003 reply was not a *bona fide* attempt to reply to the outstanding Office letter pursuant to 37 CFR 1.111 1.143 and 1.146, because it simply did not make an election consonant with the election requirement dated October 23, 2002. As the response was not considered to be a *bona fide* response, petitioners would have had to file a proper response and secure an extension of time pursuant to 37 CFR 1.136(a) running from the January 31, 2003 date. Obviously, that is no longer possible. See 35 USC § 133.

The application is being returned to storage as an abandoned filed pending further action by petitioners.

PETITION DISMISSED.


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